HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP S/S No. 1383/2003

Ashish Kumar

vs

Uttaranchal State
& others

Approved for reporting

_____

~~Not approved for reporting~~

Date of decision 29.3.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 1383 (SS) of 2003

Ashish Kumar,
S/o Sri Subhash Chandra Jain,
R/o S/o Garh Mohalla Mayan,
Kankhal, District- Haridwar. .....Petitioner.

Versus

1. Uttaranchal State of Transport Corporation.
   through its Managing Director, District Dehradun.
2. Regional Manager,
   Uttaranchal State Road Transport Corporation,
   District- Dehradun. .....Respondents.

Dated: 29.03.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Miglani, Advocate for the petitioner and Sri Ashish Joshi, Advocate for the respondents no. 1 and 2.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to pass an appropriate order of appointment under Rule 77 of U.P.S.R.T.C. Employees Regulations 1981 and policy dated 20.09.1993 on the petitioner's application dated 15.09.2003 under Dying in Harness Rules. Further prayer has also been made for a writ of mandamus commanding the respondents to pay all the service dues payable to the deceased father of the petitioner including the gratuity.

Brief facts according to the petitioner are that his father Mr. Subhash Chandra Jain had been working sincerely with the respondents as a driver on regular basis and after satisfactorily completing more than two decades of continuous service, he met with the sad demise on 27.08.2003.

After the death of his father, on 15.09.2003, the petitioner moved an application for appointment under Dying in Harness Rules before the Regional Manager U.P.S.R.T.C.

Supporting the contention of the petitioner, the mother of the petitioner also moved and affidavit of no objection stating therein that in case if the petitioner is given appointment, she and her son Manish will not raise any claim for the appointment in future.

Petitioner has submitted that, the respondents have curtailed the dues of the deceased father including the family pension and gratuity for which the petitioner has claimed before the State Authorities. However, in spite of the recommendation of the Chief Secretary dated 22.09.2003 till date the same has not yet been disbursed.

In this regard the petitioner filed a representation by way of a reminder on 21.10.2003, which was received by the office of respondent no. 2, but no action has yet been taken. On 18.09.2003, the department itself issued the no dues certificate.

The Apex Court in the case ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** has held as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the

family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

The Apex court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The relevant observations are quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

8. In ***Santosh Kumar Mishra Vs. State of U.P. [(2002) 1 UPLBEC 337.*** It has been held as under:-

"Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Parsad (Supra), for stressing his submission that the petitioner's father would be deemed to have been a regular Government servant in view of the fact that his appointment has been converted into work charge employee in pursuance of the scheme approved by the Apex Court. He further submitted that in view of the decision rendered in the case of Smt. Pushp Lata Dixit Vs. Madhyamik Shiksha Parishad and others, reported in 1991 (18) ALR 591, the petitioner is entitled for getting the appointment. In this case, the husband of Smt. Pushp Lata was working as a Paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under Dying in Harness rule was rejected by the Court and the directions were issued to accommodate the petitioner (Smt. Pushp Lata) according to her qualifications relying upon this case, the writ petition filed by Smt. Maya Devi Vs. State of U.P. and others, reported in 1998 (79) FLR 608, was also allowed in which the High Court found that the petitioner's husband in that case has satisfactorily worked for about 10 years until his death and though he may be a daily wager, the petitioner can be accommodated on compassionate grounds under Dying in Harness Rules. In the case of Smt. Saroj Devi Vs. State of U.P. and others, reported in 1999 (3) ESC 2187 (All):1 UPLBEC (Alld.) (Sum) 15, the benefit was given to the temporary appointee as he was working against a substantive vacancy."

"The Apex Court was considering the scheme and the status of a work-charge employee even after being confirmed it has been held that a work charge employee after confirmation does not cease to be a work charge employee and he continues to be a work charge employee. The question of regularization against a regular vacancy was not in issue before the Apex Court. No rule, law of any Government order has been brought to the notice of this Court by the State to indicate that any terminal benefits have been provided to the work charge employee who have to their credit a considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as work charge employee is available in the State of Uttar Pradesh nor any such provision has been shown by the learned State Counsel despite being specifically asked for."

"It may also be taken note of that if daily wager or a work charge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption would be that such and employee would be entitled for being treated to have been continuing against a regular vacancy."

It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in–harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service.

Thus compassionate appointment is treated to alleviate the distress of the family.

In view of the above, the respondents are directed to decide the representations dated 27th August, 2003 and 15th September, 2003 and 21.10.2003 with regard to the outstanding dues within a period of two months from the date of presentation of certified copy of the order.

Writ petition is disposed of No order as to costs.

29.03.2006 (Rajesh Tandon, J.)

Rathour